JUN 1 2 2003

No: 02-1539

IN THE

Supreme Court of The United States

Andrew Bestor

Petitioner

v.

United States

Respondent

On Petition for Writ of Certiorari
To The United States Court of Appeals for the District of Columbia

SUPPLEMENTAL BRIEF
Petition for Rehearing under Rule 44. para. 2.

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Supplemental Brief to Petition for Rehearing (Arg. II)

I

Without intending to mislead this Court Bestor has represented one issue two different ways - is the origin of the Third Amendment common law or is it chartered right.

In his Peution for Writ of Certiorari Bestor previously cited bars to quartering in charters provided the city of London by Henry I and Henry II - actually 'it was more kings than that,' here citing from *The Laws and Customs, Rights, Liberties, and Privileges of the City of London*, printed for R.Withy at the Dunciad, in Cornhill, and W.Griffin, in Fetter-Lane, **1765**, examining additional English Kings:

p. 5 **Richard I**. ann.5. "that none take lodgins in the city by force, or delivery of the marshal," p. 6 **John** ch.I.ann.I. "he confers all the grants made to them by his ancestors, and is almost verbatim as those of Hen.II and Rich.I.," p. 9 **Hen.3. ch.4**.ann.11. "that none by lodged upon them by force," p. 10 **Hen.3. (1216-1272) ch.9**.ann.52. "the citizens having forfeited their former charters...he also grants that none shall lodge within the walls of the city, and in *portsoken*, by force, or by delivery of the marshal," p.12 **Edward 3**. ch.1.ann.I. "all their antient liberties and customs are restored, and all usurpations of their former liberties revoked and anulled."

Citing Tom W. Bell, *The Third Amendment: Forgotten but Not Gone*, 2 William & Mary Bill of Rights J. 117 (1993):

> For political reasons, the House of Commons refused to provide Charles I with adequate revenue for housing his troops, and as a consequence they sought quarters in private homes.

> In 1628 these circumstances led Parliament to complain, in the Petition of Right, that "of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there suffer them to sojourn, against the laws and customs of this realm..." The Petition of Right asked "that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burthened in time to come....."

Bestor suggests the term "mariner" used there 'carried forward' to the New York Assembly's 1683 Charter of Libertyes and Priviledges which said "Noe Freeman shall be compelled to receive any Marriners or Souldiers into his house and there suffer them to Sojourne, against their willes provided Always it be not in time of Actuall Warr within this province" *[notes omitted],* and from there into law relative to "militia."

The question is how to close the gap between Charles I and the New York Assembly's 1683 Charter. Sir Edward Coke lived 1552-1634 but his writing addressed the time period in question, Bestor citing from *Coke's First Institutes; The First Part of the Institutes of the Laws of England*, or, a *Commentary Upon Littleton*. The First American, from the Sixteenth English Edition. Francis Hargrave and Charles Butler, Philadelphia **1812**:

Lib. 2. Cap. 3. Of Esuage. Sect. 95. Escuage is called in Latine *Scutagium*, that is, service of the shield; and the tenant, which holdeth his land by escuage, holdeth by knights service. And also it is commonly said, that some hold by the service of one knight's fee, and some by the halfe of a

knight's fee. And it is sayd, that when the king makes a voyage royall into Scotland to subdue the Scots, then he, which holdeth by the service of one knight's fee, ought to be with the king fortie dayes, well and conveniently arrayed for war. And he, which holdeth his land by moitie of a knight's fee ought to be with the king twentie dayes; and he which holdeth his land by the fourth part of a knight's fee, ought to be with the king ten dayes; and so he that hath more, more, and he that hath lesse, lesse.

[Still from Coke] Magna Charta cap. 27. "De render al roy annualment un arke, ou un espee, &c." As grand serjeanty must be done by the body of a man, so petite serjeanty hath nothing to do with the body of a man, but to render some things touchng warre; as a bow, a sword, a dagger...

Lib.2. Chap. 8. Of Grand Serjeantie Sect. 153. Tenure by grand serjeanty is, where a man holds his lands or tenements of our sovereign lord the king by such services as he ought to do in his proper person to the king, as to carry the banner of the king, or his lance, or to lead his army, or to be his marshall, or to carry his sword before him at his coronation, or to be his sewer at his coronation or his carver or his butler, or to be one of his chamberlaines of the receipt of his exchequer, or do other like services, &c.

Sect. 153 (Cont). "Come de porter le banner de nostre seignior le roy, ou de amesner son host." This great service to the king may (as it appeareth hereby) concerne the warres and matters military; for some grand serjeanties are to be done in time of war for the safety of the realme; and some in time of peace, for the honour of the realme."

But without reprinting Coke in its entirety, the volume extensively addresses land holding and tenant obligation be it fee simple, escuage, or other, while William S. Fields and David T. Hardy, *The Third Amendment and the Issue of the*

Maintenance of Standing Armies: A Legal History, American Journal of Legal History (Temple) 35 (1991): 393 attempt to fill the same time period with an excellent study of essentially military history.

Ultimately, what they identify as the 'Militia versus Standing Army controversy' was clearly anticipated in English law:

Coke's First Institutes Sect. 155. Also they, which hold by escuage, ought to doe their service out of the realme; but they, which hold by grand serjeantie, for the most part ought to doe their services within the realme.

though Bestor claims that focus to be overstated anyway: it simply is not possible to characterize the 'standing army controversy' as being more pivotal than the emergence of common law
("the house of every one is to him as his castle and fortress, as well for his defense against injury and violence, as for his repose," Semayne's Case, 5 Co. Rep. 9 1 b –1603),

the evolving relationship between sovereign and subject
("[T]he Ministerial troops (for we do not, nor cannot yet prevail upon ourselves to call them the King's troops)." 3 Writings of George Washington 291 (J. Fitzpatrick et. 1931)),

or the ongoing progression of English socio-economic history
(Coke Sect. 153: It is also a tenure by grand serjanty to hold [a] by any office to be done in person concerning the receipt of the king's treasure...[a] Vid. 51 H.3. Statut.5.....But discontinuance in effect hath worne out their office. And yet they continue their name, and keepe the keyes of the treasurie where the records doe lye),

across the time period in question.

Bestor's own situation (involving CIA or other companion agencies) is also addressed relatively explicitly in *Coke*:

Lib.2. Cap.8. of Grand Serjeantie. Sect.156. Also it is said, that in the marches of *Scotland* some hold of the king by cornage, that is to say, to winde a horne, to give men of the countrie warning, when they heare that the *Scots* or other enemies are come or will enter into *England*; which service is grande serjeanty. But if any tenant hold of any other lord, than of the king, by such service of cornage, this is not grand serjeanty, but it is knights service, and it draweth to it ward and marriage (2); for non may hold by grand serjeanty but of the king only.

Bestor essentially claims using the king's hugely specialized technology makes this *grand serjeantie*; published in the United States in **1812** obviously much of the practical application noted here was thought to be dated even at the time the Bill of Rights were framed - *But discontinuance in effect hath worne out their office. And yet they continue their name, and keepe the keyes of the treasurie where the records doe lye*. Still the quartering prohibition exists; Bestor only claims 'in their wisdom' the framers of the Constitution and Bill of Rights implicitly recognized the larger context, sought to protect the citizen and did, only that this Court must act.

Wayne R. LaFave, Valparaiso University Law Review v. 26 (Fall 1991) *The Fourth Amendment: A Bicentennial "Check Up"*, p.223:

> As one historian put it, the Fourth Amendment "remained for almost a century a largely unexplored territory"; it was not until

> the 1866 case of *Boyd v. United States* [116 U.S. 616 (1886)] that the Supreme Court had occasion to elaborate upon the Amendment's protections. In one sense the Fourth Amendment has been active a mere thirty years, as not until *Mapp v. Ohio* [367 U.S. 643 (1961)] in 1961 were states required to exclude evidence obtained in violation of the Amendment, thus insuring that it's guarantees would be taken seriously."

Concerning the king's hugely specialized technology:

on Appeal Bestor cited a 'prerecorded induced image and audio sequence' featuring Kennedy (invidious),
in the Supplemental Brief which accompanied his Petition for Writ of Certiorari Bestor cited a 'prerecorded induced image/live induced audio sequence' featuring Kennedy (less invidious),
now in this Supplemental Brief accompanying his Petition for Rehearing Bestor cites an apparent 'interactive' or 'live image sequence' induced June 11, 2003, featuring a woman naked to the waist, which was seemingly accompanied by less radiation to the hypothalamus than either of the Kennedy sequences because it was not as clear – anyway, Bestor persists in claiming these incidents should equate to Contempt of Court and trusts this Court will take a dim view of such activity.

Respectfully submitted,

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